

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLIFTON JAMES JACKSON,

Defendant.

Case No. 3:18-cr-00105-HDM-WGC

ORDER

Defendant Clifton James Jackson has filed a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF No. 115). The government has opposed (ECF No. 117), and Jackson has replied (ECF No. 118).

In November 2011, Jackson was charged by way of indictment in Case No. 3:11-cr-00142 with one count of felon in possession of a firearm. Jackson was convicted following a jury trial and sentenced to 180 months imprisonment and three years of supervised release. In 2016, pursuant to a joint motion to vacate pursuant to 28 U.S.C. § 2255 filed by the government and the defendant, Jackson was resentenced to 60 months imprisonment and three years of supervised release. Jackson was released from custody and began his term of supervised release on November 8, 2016.

On December 1, 2018, Jackson was arrested by state authorities on various charges -- several relating to unlawful possession and discharge of a firearm. A petition for revocation of supervised release was filed in Case No. 3:11-cr-00142. In addition, the grand jury returned an indictment charging Jackson with felon in

1 possession of a firearm and felon in possession of ammunition in
2 this case.

3 Jackson proceeded to trial in this case. The jury found him
4 guilty of the firearm count and not guilty of the ammunition count.
5 On the basis of the guilty verdict in this case and all the relevant
6 evidence introduced at trial, the court further found Jackson
7 guilty of violating his supervised release in Case No. 3:11-cr-
8 00142. Jackson was sentenced to 78 months in custody in this
9 action, to be followed by three years of supervised release. He
10 was sentenced in Case No. 3:11-cr-00142 to 18 months, consecutive
11 to the sentence in this case, and to an 18-month term of supervised
12 release, which will run concurrently with the term of supervised
13 release in this case.

14 Having served less than a third of his sentence in this case,
15 Jackson now seeks early release from confinement pursuant to the
16 provisions of 18 U.S.C. § 3582(c)(1)(A).

17 **I. Standard**

18 18 U.S.C. § 3582(c)(1)(A) provides in relevant part:

19 [T]he court, . . . upon motion of the defendant after
20 the defendant has fully exhausted all administrative
21 rights to appeal a failure of the Bureau of Prisons to
22 bring a motion on the defendant's behalf or the lapse of
23 30 days from the receipt of such a request by the warden
24 of the defendant's facility, whichever is earlier, may
25 reduce the term of imprisonment (and may impose a term
26 of probation or supervised release with or without
27 conditions that does not exceed the unserved portion of
28 the original term of imprisonment), after considering
the factors set forth in section 3553(a) to the extent
that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a
reduction;

. . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.¹

U.S.S.G. § 1B1.13 provides:

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1)(A) extraordinary and compelling reasons warrant the reduction;

. . .

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) the reduction is consistent with this policy statement.

U.S.S.G. § 1B1.13.

The defendant is not entitled to be present for a hearing on a motion for compassionate release. See Fed. R. Crim. P. 43(b)(4).

II. Analysis

Jackson seeks release pursuant to § 3582(c)(1)(A) due to the COVID-19 epidemic and his underlying health conditions, which he argues put him at greater risk of severe COVID-19 complications should he contract the virus. The government opposes, arguing that Jackson has established neither extraordinary and compelling

¹ In addition to "extraordinary and compelling reasons," the court may grant a motion if "the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g)." 18 U.S.C. § 3582(c)(1)(A)(ii). Because Jackson is not over 70 years of age and has not served more than thirty years in prison, this provision does not apply.

1 reasons support his release nor that a reduction in sentence is
2 appropriate under the factors of 18 U.S.C. § 3553(a).

3 **A. Exhaustion**

4 Before a defendant may file a § 3582(c)(1)(A) motion, he must
5 either (1) exhaust any administrative appeals of the warden's
6 refusal to bring a motion or (2) wait thirty days from the warden's
7 receipt of the request, whichever is earlier. The government
8 concedes that Jackson's motion is exhausted. Jackson submitted a
9 request for compassionate release to the warden on June 16, 2020.
10 The warden denied Jackson's request on June 24, 2020. (ECF No.
11 115-2 (Ex. A)). Thirty days have elapsed from the date Jackson's
12 request was submitted to the warden, so the motion is exhausted.

13 **B. Extraordinary and Compelling Reasons**

14 Section 1B1.13 sets forth specific examples of "extraordinary
15 and compelling reasons," including in relevant part that the
16 defendant is "suffering from a serious physical or medical
17 condition . . . that substantially diminishes the ability of the
18 defendant to provide self-care within the environment of a
19 correctional facility and from which he or she is not expected to
20 recover." U.S.S.G. § 1B1.13 app. n.(1)(A)(ii)(I). There is also a
21 catch-all provision, which provides: "As determined by the
22 Director of the Bureau of Prisons, there exists in the defendant's
23 case an extraordinary and compelling reason other than, or in
24 combination with, the reasons described in subdivisions (A)
25 through (C)." *Id.* app. n.(1)(D).

26 Jackson asserts that the COVID-19 epidemic, in combination
27 with underlying health conditions that put him at greater risk of
28 COVID-19 complications, pose extraordinary and compelling reasons

1 for his release. Jackson is 56 years old, is a member of a racial
2 minority, has hypertension, is borderline obese and is in remission
3 for Type II diabetes. He asserts that all of these conditions put
4 him at a greater risk of severe COVID-19 outcomes were he to
5 contract the illness. Jackson argues that although his diabetes is
6 in remission, diabetes is a chronic condition and that the COVID-
7 19 precautions being taken by the Bureau of Prisons prevent him
8 from doing the physical activity necessary to keep not only his
9 diabetes, but also his hypertension and weight, under control.
10 Finally, Jackson asserts that he also suffers from an enlarged
11 prostate, which is not currently being treated due to the pandemic.

12 The government contends that Jackson has not established that
13 his current medical condition amounts to extraordinary and
14 compelling reasons for his release. It argues that only pulmonary
15 hypertension is a known risk factor for COVID-19 complications and
16 that the results are "mixed" as to whether regular hypertension
17 also increases risk. It argues that Jackson does not currently
18 suffer from diabetes and that he is not obese.

19 Whether Jackson's current medical condition puts him at a
20 higher risk of COVID-19 complications is a close question - one
21 that is made closer by the fact that there is no evidence his
22 institution has endured a rapid or wide spread of COVID-19. See
23 <https://www.bop.gov/coronavirus/> (last accessed Sept. 18, 2020)
24 (reflecting one active COVID-19 case at FCI Herlong of nine
25 positive results overall). But even assuming that Jackson's
26 condition in light of the COVID-19 epidemic does establish
27 extraordinary and compelling reasons for release, the court would
28

1 nevertheless deny his motion because the 18 U.S.C. § 3553(a)
2 factors do not favor his release.

3 **C. 18 U.S.C. § 3553(a) Factors**

4 The court may grant compassionate release only if the
5 defendant is not a danger to any other person or to the community,
6 as provided in 18 U.S.C. § 3142(g), *United States v. Johnson*, 2020
7 WL 2114357, at *1 (E.D. Wash. May 4, 2020) ("[T]he Court should
8 not grant a sentence reduction if the defendant poses a risk of
9 danger to the community, as defined in the Bail Reform Act."), and
10 the relevant 18 U.S.C. § 3553(a) factors favor release.

11 Jackson's conduct at issue in this case was serious and
12 involved possession of a stolen firearm while on supervised release
13 for unlawful possession of a firearm. It furthermore involved
14 discharge of a firearm in a populated area and in the presence of
15 his teenage son. Jackson's criminal history is, in addition,
16 substantial and involved several theft offenses, several drug
17 offenses, attempted robbery, and battery with a deadly weapon.
18 Finally, Jackson has served less than a third of his sentence in
19 this case, which weighs heavily against granting a release at this
20 time. Considering the nature and circumstances of the offense and
21 Jackson's history and characteristics, the court concludes that
22 Jackson's motion should be denied in order to reflect the
23 seriousness of the offense, promote respect for the law, provide
24 just punishment for the offense, afford adequate deterrence to
25 criminal conduct, protect the public from further crimes of the
26 defendant, and avoid unwarranted sentencing disparities. The
27 motion for compassionate release will therefore be denied on those
28 grounds.

In accordance with the foregoing, Jackson's motion for compassionate release (ECF No. 115) is hereby DENIED.

DATED: This 18th day of September, 2020.

UNITED STATES DISTRICT JUDGE